IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

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: J U D G M E N T :

1] RAM NIWAS & ANR. VS. STATE OF RAJASTHAN

D.B. CRIMINAL APPEAL NO.475/1989

2] KISHORE SINGH VS. STATE OF RAJASTHAN

D.B. CRIMINAL JAIL APPEAL NO. 3/1990

against the judgment dated 24.11.1989 passed by the learned Additional Sessions Judge, Merta in Sessions Case No.18/1988.

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DATE OF JUDGMENT :: 10.1.2006

PRESENT

HON'BLE MR. N.N. MATHUR, J.
HON'BLE MR. MANAK MOHTA, J.

Mr. B.N. Kalla, for the appellants.
Mr. Vishnu Kachhwaha, Public Prosecutor.

BY THE COURT : (PER HON`BLE N.N. MATHUR, J.)

1. The appellants-Ram Niwas and Kishore Singh have preferred two separate appeals challenging the judgment dated 24.11.1998 passed by the Sessions Judge, Merta convicting them for offence under Section 302 I.P.C. and sentencing each of them to imprisonment for life and to pay a fine of Rs.5000/-,in default to further undergo one year's rigorous imprisonment. The appellants have also been convicted for the offence under Section 364 I.P.C. and sentenced to 5 years rigorous imprisonment

and to pay a fine of Rs.2000/-, in default to further undergo six months rigorous imprisonment.

2. The facts of the case as disclosed during trial are that, deceased-Chotu Ram use to run a tea stall at bus stand of Village Sanju. He abruptly disappeared. A missing report (Exhibit-P/8) of the same was filed by his father PW-7 Ram Dayal @ Dayal Ram at P.S. Deegana, District Nagore on 18.1.1988 after about 1 ½ years stating inter alia that he visited the tea stall of his son and noticed a sum of Rs.3,500/- with him. At that time, appellants – Ram Niwas, Kishore Singh and one Seespal Singh were also sitting there. In the evening, he left the hotel but his son did not return to the house till late night, on which he made search of him but could not trace out. About six months back, he met Seespal Singh. He found a wrist watch belonging to his missing son on his wrist. He was also found wearing silver chain belonging to his son. He enquired from him about his son but he pleaded ignorance. He made a search of his missing son at various places, namely, Surat, Ahmedabad, Hyderabad etc. About four days back he came to know that the three miscreants has abducted his son and killed him. On this report, police registered a case of offence under Section 364 I.P.C. and proceeded with the investigation. After usual investigation, police laid charge-sheet against the appellants for the offence under Sections 364, 302 and 404 I.P.C.

3. The accused-appellants pleaded not guilty of the charges levelled against them and claimed trial. The prosecution adduced oral and

documentary evidence to bring home guilt against the appellants. The appellants in their statements recorded under Section 313 Cr. P.C. denied the correctness of the prosecution evidence appearing against him. The trial court having found the prosecution case proved, convicted and sentenced the appellants in the manner indicated above.

4. Challenging the conviction, it is submitted by Mr. B.N. Kalla, learned counsel for the appellants that the trial court has failed to appreciate that there is no evidence of clinching nature leading to the inference that the appellants committed the murder of Chotu Ram. On the other hand, the learned Public Prosecutor has supported the judgment of the trial court.

5. We have scanned, scrutinized and evaluated the prosecution evidence carefully. There is no ocular evidence of the occurrence. The prosecution has relied upon following piece of circumstances :

(i) That the deceased-Chotu Ram was last seen in the company of the appellants.

(ii) The skeleton of the deceased-Chotu Ram was recovered at the instance of the appellants.

6. It is now well settled that that in case of circumstantial evidence the prosecution must establish each circumstance firmly by cogent evidence. All the circumstances taken together should form a

chain pointing towards the guilt of the accused and cumulative effect of the circumstances must lead to no other inference but of the guilt of the accused.

7. As far as the circumstance of last seen is concerned, the prosecution has examined PW-2 Dhaglu Ram and PW-5 Balu Ram. **PW-2 Dhaglu Ram** stated that he knew deceased-Chotu Ram, who use to run a tea stall at the Sanju bus stand. About 16-17 months back from the date of recording the statement, he had seen the appellants sitting at the hotel of deceased-Chotu Ram. He stated that he had not seen Chotu Ram since then. **PW-5 Babu Ram** is the uncle of deceased-Chotu Ram. He stated that deceased-Chotu Ram aged 20-22 years, use to run a tea stall at the Sanju bus stand. He had last seen him about 2 ½ years back. At that time, he was possessing currency notes of Rs.3,500/-. The deceased told him that as the family members were not arranging marriage for him, he himself will undertake the same and bring a lady. He further stated that the appellants-Ram Niwas and Kishore Singh were the frequent visitors of the hotel. When he had last seen him, he was wearing pent and shirt. Having considered the statements of PW-2 Dhaglu Ram and PW-5 Balu Ram, we are of the view that even if the statements of both the witnesses are accepted on its face value, the evidence can hardly be said to be the evidence of last seen. As far as PW-5 Balu Ram is concerned, he has also stated that the appellants-Ram Niwas and Kishore Singh were the frequent visitors of the hotel of deceased-Chotu Ram. On the basis of these statements, it cannot be said

that the deceased was last seen in the company of Ram Niwas and Kishore Singh. Similarly, PW-2 Dhagla Ram has only stated that on the date when he had last seen Chotu Ram, the appellants-Ram Niwas and Kishore Singh were also sitting in the hotel. This cannot be considered as the evidence of last seen. Thus, the trial court has committed an error in considering the evidence of last seen as incriminating to complete the chain of circumstances leading to the inference that the appellants committed the murder of Chotu Ram.

8. As regards the second circumstance, **PW-9 Chiranji Lal** (who is the Investigating Officer of the case) stated that in pursuance of the information given by Kishore Singh vide Exhibit-P/9 and Ram Niwas vide Exhibit-P/14, a skeleton of deceased-Chotu Ram was taken out from a well vide recovery memo (Exhibit-P/2) on 21.8.1988. PW-7 Ram Dayal @ Dayal Ram the father of deceased identified the skeleton as to be that of his missing son-Chotu Ram on the basis of a 'tabeej' upon which the name of Chotu Ram was engraved. It has been admitted by PW-9 Chiranji Lal that it was difficult to read the name of Chotu Ram as engraved on the 'tabeej'. It has also been admitted the report from Forensic Science Laboratory not received and as such was not produced before the trial court. From the evidence on record, at the first instance, it cannot be said that the skeleton was of Chotu Ram. Secondly, it was of a person who died of homicidal death. Thus, the prosecution has failed to establish the second circumstance firmly. The circumstance cannot also be said to be of conclusive nature.

9. In view of the aforesaid discussion, we are of the view that the prosecution has failed to establish from the circumstances put forward that it was the appellants who abducted and committed the murder of Chotu Ram. Thus, we are unable to uphold the conviction of the appellants recorded by the trial court.

10. In view of the aforesaid, we allow the appeal and set aside the judgment of Sessions Judge, Merta dated 24.11.1989. The appellants are acquitted of the charges levelled against them. The appellant-Kishore Singh is on bail, his bail bond stands discharged. Appellant-Ram Niwas is in jail. He shall be released forthwith, if not required in any other case.

(MANAK MOHTA), J. **(N.N. MATHUR), J.**

Sanjay/-